Office - Supreme Court, U. S.
FILED
MAY 21 1955
HAROLD B. WILLEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1954.

## No. 732

MERCHANTS MATRIX CUT SYNDICATE, INC., INTERTYPE CORPORATION AND THE ADVERTISING CHECKING BUREAU, INC.,

*Petitioners,*

*vs.*

UNITED STATES OF AMERICA AND CLARK-CONGRESS CORPORATION,

*Respondents.*

## PETITIONERS' REPLY TO BRIEF OF CLARK-CONGRESS IN OPPOSITION TO PETITION FOR CERTIORARI.

EDWARD B. LUCIUS,
EDWARD G. LUCIUS,
135 S. La Salle St.,
Chicago 3, Illinois,
*Attorneys for Petitioner Merchants Matrix Cut Syndicate, Inc.*

SHERWOOD K. PLATT,
CHARLES L. STEWART, JR.,
231 S. La Salle St.,
Chicago 4, Illinois,
*Attorneys for Petitioner Intertype Corporation.*

HORACE A. YOUNG,
135 S. La Salle St.,
Chicago 3, Illinois,
*Attorney for Petitioner The Advertising Checking Bureau, Inc.*

Of Counsel:
MAYER, FRIEDLICH, SPIESS, TIERNEY, BROWN & PLATT,
LUCIUS & LUCIUS.

April 19, 1955.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

BLEED THROUGH POOR COPY

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1954.

---

**No. 732.**

---

MERCHANTS MATRIX CUT SYNDICATE, INC., INTERTYPE CORPORATION AND THE ADVERTISING CHECKING BUREAU, INC.,

*Petitioners,*

*vs.*

UNITED STATES OF AMERICA AND CLARK-CONGRESS CORPORATION,

*Respondents.*

---

## PETITIONERS' REPLY TO BRIEF OF CLARK-CONGRESS IN OPPOSITION TO PETITION FOR CERTIORARI.

---

The Clark-Congress brief does not contest the jurisdiction of this Court, our view of the Questions Presented, nor our view of the importance of those questions to individual rights under the Constitution, to State-Federal relations, and to the proper administration of justice by the federal courts.

This reply, like Clark-Congress' brief, relates only to the claims against Clark-Congress. Neither Clark-Congress nor the Government (which filed no brief in opposition within the time allowed), offers this Court any basis for declin-

ing to review, or affirming by inaction the reversal of the condemnation awards by the Court below. Since the opinion below gave no cogent explanation for reversing those judgments, there appears to be an uncontroverted need for certiorari with respect to that part of this case.

## STATEMENT.

The substance of Clark-Congress' position appears to be as follows:

A. It contends that the trial court was mistaken in finding the facts that it found, and assumes facts directly contrary to those found by trial court:

1. It contends that the Government taking of petitioners' property by eminent domain eliminates all proven facts as to Clark-Congress' acts injurious to petitioners.

2. It contends that the trial court ought to have found that Clark-Congress was an innocent victim of the Government's power of eminent domain, whose predicament was similar to that of the petitioners, instead of finding that Clark-Congress was a covenant-breaching, tort-feasing, service-curtailing, profiteering landlord.

3. It contends that the trial court was mistaken in finding that Clark-Congress, in its quest for the riches given it by the lease, aided, abetted and was a co-efficient cause of petitioners' damages, and asserts that the Court of Appeals determined that the eminent domain taking was the only cause of petitioners' injuries.

B. Assuming that the Government was the only cause of petitioners' injuries and Clark-Congress was not involved, the brief in opposition suggests that the Court of Appeals' failure to apply Illinois law is unimportant since

BLEED THROUGH POOR COPY

on those facts Illinois law would not have made Clark-Congress liable for petitioners' injuries.

C. The brief asserts that the Court of Appeals cannot have cloaked Clark-Congress with the immunity of the sovereign since its opinion does not say it is doing so.

D. The brief asserts that a day in court is due process enough for petitioners.

We shall reply to these contentions in the short argument below.

## ARGUMENT.

### A. Whether Clark-Congress Injured Petitioners Was an Issue of Fact for the Trial Court.

Clark-Congress' brief attempts to persuade this Court that Clark-Congress did nothing which injured petitioners or caused them to move from the Rand McNally Building. The brief is replete with record references and discussion seeking to demonstrate that petitioner's damages were caused entirely by the Government. All of this discussion is based on a tacit assumption that each reviewing court should re-examine all of the facts and reach its independent conclusion as to what caused the injuries complained of. For the reasons stated in the petition, it is clear that neither the Court of Appeals nor this Court should attempt to retry the issues of fact presented in Clark-Congress' brief in opposition. Moreover, reversal with directions to strike the claims was not a proper way for the Court of Appeals to implement any disagreement it may have had with the findings of the District Court.

### B. Whether Clark-Congress Was Liable to Petitioners, and the Measure of Their Damages, Were Questions of Illinois Law, Not of Federal Eminent Domain Law.

It is immaterial whether Clark-Congress is right in asserting that Illinois law would not allow recovery against Clark-Congress for wrongs done to petitioners by the Government. Illinois law does allow recovery against a landlord who permits one tenant to remodel and interfere with the quiet enjoyment of premises leased to other tenants,

BLEED THROUGH POOR COPY

and that was the situation here. Clark-Congress goes so far as to contend as a general principle that moving costs cannot be recovered from a landlord as damages for breach of the covenant of quiet enjoyment, neglecting to mention the important factor of proximate causation. Actually, all damages caused by the breach are recoverable under Illinois law. However, the Court need not devote its attention to such questions, for what needs to be decided here is whether the court below should apply Illinois law instead of federal eminent domain law.

Since Illinois law is applicable as shown in the Petition, it is likewise immaterial to assert, as Clark-Congress does, that moving costs are not includable in a tenant's compensation for the value or property taken by the Government. Here, the cause of the moving has been found to be the remodeling and harassment which occurred before the condemnation. The Government's belated taking was employed as a device to accelerate petitioners' departure. Petitioners had searched thoroughly for new quarters and had made preliminary arrangements to move before the taking occurred.

Clark-Congress relies upon the taking as a happy development which erased liability which had already accrued. A condemnation proceeding at the proper time, under this theory, though it cannot wipe out the injuries previously inflicted upon tenants, can exonerate the landlord from all responsibility. Such is not the law, although it is the effect of the decision below.

Reliance upon federal eminent domain cases led the court below into this unjust doctrine. But none of the condemnation cases relied upon dealt with facts like these, where the condemnee had been injured *before* the taking, by events constituting torts and breaches of lease covenants, in which agents of the Government had worked hand in glove with

private parties who were reaping a handsome reward. Clearly, in such a case, the State law applicable to the pre-condemnation events is not rendered inapplicable by the occurrence of condemnation.

### C. The Court Below Cloaked Clark-Congress With Sovereign Immunity When It Used Federal Eminent Domain Cases to Measure Clark-Congress' Liability.

If the sovereign were not inherently immune from liability to citizens it would have been unnecessary for the Constitutional Amendment to provide the exception, that the Government must pay just compensation for property taken for public use. Cases interpreting and applying the exception implicitly recognize the general rule of immunity. Therefore, to apply such cases in restricting a landlord's liability is to give him the benefit of the general rule of sovereign immunity. This is what the Court of Appeals did, albeit unwittingly, in the opinion below.

### D. Three Years Without Provision for Just Compensation Is Too Many Days, in or Out of Court, to Constitute Due Process of Law.

Petitioners had their day in the District Court, and have not complained of their treatment there as a denial of due process. The petition asserts, however, and we repeat here, that the actions of Clark-Congress jointly with agents of petitioners' co-tenant were a series of grievous wrongs for which the Court of Appeals has denied any remedy; that the subsequent condemnation of petitioners' leaseholds violated the statutes authorizing the acquisition of federal office space outside of the District of Columbia; and that the reversal of the condemnation awards which were within the range of the evidence and the decision to disregard the

BLEED THROUGH POOR COPY

trial court's findings, and to strike petitioners' claims for damages against Clark-Congress, were violations of proper judicial procedures which are a part of due process of law.

## Conclusion.

After three years, petitioners have still not been paid, or assured, just compensation for the taking of their business homes by their Government. Such deprivation of Constitutional rights is a matter of general importance, calling for the exercise of the supervisory authority of this Court, and for a clear statement of the law applicable to such proceedings as this.

Moreover, the court below applied federal eminent domain cases instead of Illinois landlord and tenant cases to the claims against Clark-Congress, showing a vital misconception of fundamental legal principles which need now to be restated and applied by this Court.

Respectfully submitted,

EDWARD B. LUCIUS,
EDWARD G. LUCIUS,
*Attorneys for Petitioner Merchants Matrix Cut Syndicate, Inc.*

SHERWOOD K. PLATT,
CHARLES L. STEWART, JR.,
*Attorneys for Petitioner Intertype Corporation.*

HORACE A. YOUNG,
*Attorney for Petitioner The Advertising Checking Bureau, Inc.*

Of Counsel:
MAYER, FRIEDLICH, SPIESS, TIERNEY, BROWN & PLATT,
LUCIUS & LUCIUS.

April 19, 1955.